

discretion, hold a public hearing whenever the Administrator finds that such a hearing will contribute to the decision-making process by clarifying one or more significant issues affecting the draft permit or denial of a draft permit. Public hearings will not be held on issues under § 72.66(c) (1) and (2).

(c) During a public hearing under this section, any person may submit oral or written comments concerning the draft permit or denial of a draft permit. The Administrator may set reasonable limits on the time allowed for oral statements and will require the submission of a written summary of each oral statement.

(d) The Administrator will assure that a record is made of the hearing.

**§ 72.68 Response to comments.**

(a) The Administrator will consider comments on the draft permit or denial of a draft permit that are received during the public comment period and any public hearing. The Administrator is not required to consider comments otherwise received.

(b) In issuing or denying an Acid Rain permit, the Administrator will:

- (1) Identify any permit provision or portion of the statement of basis that has been changed and the reasons for the change; and
- (2) Briefly describe and respond to relevant comments under paragraph (a) of this section.

**§ 72.69 Issuance and effective date of acid rain permits.**

(a) After the close of the public comment period, the Administrator will issue or deny an Acid Rain permit. The Administrator will serve a copy of any Acid Rain permit and the response to comments on the designated representative for the source covered by the issuance or denial and serve written notice of the issuance or denial on any persons who are entitled to written notice under § 72.65(b)(1) (ii), (iii), and (iv) of this part. The Administrator will also give notice in the FEDERAL REGISTER.

(b)(1) The term of every Acid Rain permit shall be 5 years commencing on its effective date.

(2) Every Acid Rain permit for Phase I shall take effect on January 1, 1995.

**Subpart G—Acid Rain Phase II Implementation**

**§ 72.70 Relationship to title V operating permit program.**

(a) *Scope.* This subpart sets forth criteria for approval of State operating permit programs and the requirements with which State permitting authorities with approved programs shall comply, and with which the Administrator will comply in the absence of an approved State program, to issue Phase II Acid Rain permits.

(b) *Relationship to Operating Permit Program.* Each State permitting authority with an affected source shall act in accordance with this part and part 70, and part 78 of this chapter for the purpose of incorporating Acid Rain Program requirements into each affected source's operating permit or for issuing written exemptions under §§ 72.7 and 72.8. To the extent that any requirements of this part and part 78 of this chapter are inconsistent with the requirements of part 70 of this chapter, this part and part 78 of this chapter shall take precedence and shall govern the issuance, denial, revision, reopening, renewal, and appeal of the Acid Rain portion of an operating permit. For purposes of applying this subpart, the provisions of this subpart and of part 70 applicable to Acid Rain permit applications and draft, proposed, and final Acid Rain permits shall also apply to petitions for exemption and draft, proposed, and final written exemptions respectively for new or retired units to the extent consistent with §§ 72.7 and 72.8 of this chapter.

**§ 72.71 Approval of state programs—general.**

(a) Each State shall submit, to the Administrator for approval, a proposed operating permit program meeting the requirements of this subpart and part 70 of this chapter.

(b) The Administrator will act on State submissions of an operating permit program in accordance with the schedule and procedures set forth in § 70.4(e) of this chapter. The Administrator will approve State programs that conform to the applicable requirements of this subpart and § 70.4(b) of this chapter.

(c)(1) After approval of a State operating permit program, the Administrator will suspend, in accordance with this part and part 70 of this chapter, federal issuance of Acid Rain permits for Phase II for sources and units subject to the State program.

(2) The Administrator will issue all Acid Rain permits for Phase I. However, the Administrator reserves the right to delegate the remaining administration of Acid Rain permits for Phase I to approved State operating permit programs.

**§ 72.72 State permit program approval criteria.**

A State operating permit program shall meet the following criteria concerning the Acid Rain Program. Any aspect of the State program or any implementation of the State program that is inconsistent with these criteria shall be grounds for disapproval or withdrawal of approval of the State program by the Administrator:

(a) *Non-Interference with Acid Rain Program.* The State operating permit program shall not include or implement any measures that would interfere with the Acid Rain Program. In particular, the State program shall not restrict or interfere with allowance trading and shall not interfere with the Administrator's decision on an offset plan. Aspects and implementation of the State program that would constitute interference with the Acid Rain Program, and are thus prohibited, include but are not limited to:

(1) Prohibitions, inconsistent with the Acid Rain Program, on the acquisition or transfer of allowances by an affected unit under the jurisdiction of the State permitting authority;

(2) Restrictions, inconsistent with the Acid Rain Program, on an affected unit's ability to sell or otherwise obligate its allowances;

(3) Requirements that an affected unit maintain a balance of allowances in excess of the level determined to be prudent by any utility regulatory authority with jurisdiction over the owners of the affected unit;

(4) Failing to notify the Administrator of any State administrative or judicial appeals of, or decisions covering, Acid Rain permit provisions that

might affect Acid Rain Program requirements;

(5) Issuing an order, inconsistent with the Acid Rain Program, interpreting Acid Rain Program requirements as not applicable to an affected source or an affected unit in whole or in part or otherwise adjusting the requirements;

(6) Withholding approval of any compliance option that meets the requirements of the Acid Rain Program; or

(7) Any other aspect of implementation that the Administrator determines would hinder the operation of the Acid Rain Program.

(b) The State operating permit program shall require the following:

(1) *Acid Rain Permit Issuance.* Issuance or denial of Acid Rain permits shall follow the procedures under this part, part 70 of this chapter, and, for combustion or process sources, part 74, including:

(i) *Permit application—(A) Requirement to comply.* (1) The owners and operators and the designated representative for each affected source, except for combustion or process sources, under jurisdiction of the State permitting authority shall be required to comply with subparts B, C, and D of this part.

(2) The owners and operators and the designated representative for each combustion or process source under jurisdiction of the State permitting authority shall be required to comply with subpart B of this part and subparts B, C, D, and E of part 74 of this chapter.

(B) *Effect of an Acid Rain permit application.* A complete Acid Rain permit application, except for a permit application for a combustion or process source, shall be binding on the owners and operators and the designated representative of the affected source, all affected units at the source, and any other unit governed by the permit application and shall be enforceable as an Acid Rain permit, from the date of submission of the permit application until the issuance or denial of the Acid Rain permit under paragraph (b)(1)(vii) of this section.

(C) *Submission to the Administrator.* The State permitting authority shall submit a written notice of application completeness to the Administrator